

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Revision of the Commission’s Rules to Ensure)
Compatibility with Enhanced 911 Emergency Calling) CC Docket 94-102
Systems)
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Order

Adopted: July 16, 2001

Released: July 17, 2001

By the Chief, Policy Division, Wireless Telecommunications Bureau:

1. In this Order, we deny Cingular Wireless LLC (Cingular)’s request that we keep confidential the following exhibits attached to Cingular’s Request for Waiver of the E911 Phase II Location Technology Implementation Rules¹ and certain material contained in the body of the Cingular waiver request culled from these exhibits:

- Attachment D, E911 Phase II Trial Results
- Attachment E, Deployment Time Line Estimation for Network-Based E911 Phase II Location Technologies
- Attachment F, Deployment Cost Estimation for Network-Based E911 Phase II Location Technology Solutions

Attachment D “E911 Phase II Trial Results” and certain information contained in the body of Cingular’s waiver request reflect test results for certain location technologies. Attachments E and F contain further analysis of these location technologies. We deny Cingular’s request for confidential treatment of these materials for two reasons. First, we find that Cingular did not meet the procedural requirements for asserting confidentiality as required under Section 0.459(b) of the Commission’s rules.² Second, Cingular did not demonstrate by a preponderance of the evidence that the materials in question were entitled to confidential treatment. Even if the materials could be deemed confidential, however, we find that the public interest requires that these materials be made available for public inspection.

2. In its July 6, 2001 letter requesting confidential treatment, Cingular asserts that the materials contain “proprietary commercial information and confidential cost information.” Although some trade secrets and commercial or financial information are automatically accepted by the Commission on a confidential basis under Section 0.457(d)(1), the materials in question do not fall under these exceptions.³

¹ *Cingular Wireless LLC Request for Limited Waiver of the E911 Phase II Location Technology Implementation Rules*, CC Docket No. 94-102 (filed July 6, 2001) (*Cingular Waiver Request*).

² 47 C.F.R. § 0.459(b).

³ *See* 47 C.F.R. § 0.457(d)(1).

Therefore, Cingular is required to make its confidentiality request pursuant to Section 0.459.⁴ Cingular does not provide a statement of reasons for withholding the materials from inspection as required by Section 0.459(b).⁵ Cingular asserts only that the materials contain proprietary commercial information and confidential cost information and that “the results of the location technology trials summarized in Attachment D are covered by non-disclosure agreements with the various location technology vendors.” Because this request fails to comply with the standards set forth in Section 0.459(b), we deny it.⁶

3. We also find that Cingular has not shown that the materials warrant confidential treatment. In its confidentiality request, Cingular concludes without any supporting explanation that the materials contain proprietary commercial and confidential cost information. Mere conclusory or generalized allegations cannot support a request for nondisclosure.⁷ Because Cingular has not presented by a preponderance of the evidence a case for nondisclosure consistent with the provisions of the Freedom of Information Act,⁸ as required by Section 0.459(d)(2) of the Commission’s rules, we deny Cingular’s request for confidential treatment.

4. Under the Commission’s rules, if after parties have exhausted all appeal rights as set forth in Section 0.459(g), the request is denied, the materials will be placed in a public file. Although materials submitted voluntarily are ordinarily returned to the party seeking confidential treatment where a request for confidentiality is denied, we find that in order to facilitate our evaluation of Cingular’s request for waiver, the public interest requires that the identified materials be made available for public inspection.⁹ These materials provide information about the degree to which certain location technologies are capable of meeting the Commission’s standards for E911 Phase II implementation. Public disclosure of this information will provide an opportunity for review and analysis of this information by interested parties, which may inform our evaluation of the current state of readiness of E911 location technologies as well as our decision upon Cingular’s specific waiver request. Therefore, because of the significant public safety issues and policy reasons underlying the Commission’s E911 Phase II implementation rules, we find the public interest requires that we make the identified materials available for public inspection.¹⁰

5. **ACCORDINGLY**, Cingular’s request for confidentiality contained in its July 6, 2001 letter **IS DENIED**, to the extent indicated herein. Any application for review of this ruling must be filed within five business days of the date of this Order.¹¹ Third party owners of materials submitted to the Commission by Cingular may also participate in the proceeding resolving the confidentiality of the materials.¹²

6. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent, by facsimile and by

⁴ See 47 C.F.R. § 0.457(d)(2).

⁵ For example, Cingular does not explain the degree to which the information is commercial or the degree to which the information concerns a service that is subject to competition. In addition, Cingular does not provide an explanation of how disclosure of the information could result in substantial competitive harm. See 47 C.F.R. § 0.459(b)(3)-(5).

⁶ See 47 C.F. R. § 0.459(c).

⁷ See *National Exchange Carrier Ass’n, Inc.*, Memorandum Opinion and Order, 5 FCC Rcd 7184, 7184, para. 3 (1990) (quoting *National Parks and Conservation Ass’n v. Kleppe*, 547 F.2d 673, 680 (D.C. Cir. 1976)).

⁸ 5 U.S.C. § 552.

⁹ 47 C.F.R. § 0.459(e).

¹⁰ One reference to a specific third party equipment vendor contained in Attachment D will be redacted, as it is not material to the test results we seek to make public.

¹¹ 47 C.F.R. § 0.459(g).

¹² 47 C.F.R. § 0.459(i).

Certified Mail/Return Receipt Requested, to:

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FEDERAL COMMUNICATIONS COMMISSION

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